IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6891 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DAMOR KANTILAL N

Versus

UNION OF INDIA

Appearance:

Mr.D.C. Raval with MR MR ANAND for Petitioner

Mr. Mukesh R. Shah for respondents nos.1 & 2.

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 04/08/2000

ORAL JUDGEMENT :

The present petition is filed being aggrieved of the judgement and order passed by the Assistant Commandant & Judicial Magistrate, 1st Class, 97th Battalion, CRPF, Gandhinagar in Case No.1/88 dated

16.6.1988 under sec.10(m) of the Central Reserve Police Force Act, 1949 ("the Act" for brevity) and also being aggrieved of the Office Order No.J.II- 1/88- 97/ EC.II dated 30.6.1988, whereby the petitioner was held guilty of an offence punishable under sec.10(m) of the Act and was sentenced to undergo rigorous imprisonment for 28 days in GC, CRPF, Gandhinagar Quarter Guard and that the period spent by the accused in the judicial custody from 14.6.1988 to 15.6.1988 will be set off against the period of sentence. The order dated 30.6.1988 reads as under :

> "It is considered that the conduct of No.781130287 CT, D.K. Lal which led to his conviction is such as to render his further retention in the Public Service undesirable. Consequent on his conviction, he has been DISMISSED from service w.e.f. 16.6.1988 (PN) under section 12(1) of CRPF Act, 1949. .. .."

2. Short facts giving rise to the present petition are that the petitioner, who was working as a Constable in the 97th Battalion of CRPF, an Armed Force within the meaning of the Central Administrative Tribunals Act, has started his career about 10 years ago from the date of the petition. It is the case of the petitioner that he took leave from his duty for seven days from 3.5.1988 and he was to rejoin his duty on 10.5.1988. The petitioner has gone to his native place during his leave period and during this time his brother's marriage was arranged and fixed on 13.5.1988. Therefore, on 10.5.1988 itself the petitioner sent a telegram to the respondent authorities requesting for extension of leave for four days. It is also the case of the petitioner that the petitioner has not maintained any other record of the telegram, but the Sub Post Master, Bhiloda has issued a certificate from his record certifying that the petitioner has sent this telegram on 10.5.1988 addressed to the respondent authorities for extension of leave for four days.

3. It is the case of the petitioner that thereafter the wife of the petitioner was not well while the petitioner was on leave, and later she developed serious chronic bronchitis and was under treatment of the Medical Officer, Primary health Centre. The petitioner was to remain with her during her illness. A certificate issued by the Medical Officer, Primary Health Centre, Gabat is also produced on record of this case. The petitioner remained with his wife till 13.6.1988 and it was in the evening of 13.6.1988 that the petitioner reported back for his duty.

4. On 13.6.1988 the petitioner was placed under the departmental custody for unauthorised absence. The Company Commander, Shri Babu Ram lodged a complaint dated 26.5.1988 in the Court of respondent no.2 authority accusing the petitioner of being guilty of overstaying his leave without sufficient cause. The petitioner was charged of being guilty of the offence under sec.10(m) of the Act. Trial was conducted and the authority delivered its judgement on 16.6.1988, a copy of which is produced at Annexure 'D'. It is important to note that in this judgement it is very clearly recorded that,

> " .. .. accused appeared in my Court. The case on same date, could not be heard as the undersigned was committed to some important official job. The next date of hearing was fixed for 15.6.88. On 15.6.88 the accused was produced before me and accusation contained in the complaint were put up to the accused and explained to him in the language he understood. Plea of the accused was recorded and accused pleaded "guilty". I however, decided to have the prosecution evidence and to allow the accused the adequate opportunity to defend himself. He was also asked if he wanted to engage a pleader to defend his case. He declined to avail the facility and refused to engage any pleader to defend his case. .. .." [emphasis supplied]

Thereafter, an order dated 30.6.1988, came to be passed and the petitioner stood dismissed. Said conviction and dismissal are under challenge in this petition.

5. Mr.Raval appearing for the petitioner vehemently submitted that the petitioner was charged under sec.10(m) of the Act, which bears the title of "less heinous offences", that while the petitioner was still undergoing rigorous imprisonment, the order of dismissal of the petitioner came to be passed, which has resulted into disentitlement of the petitioner to any pay and allowances or any other service benefits for the period of unauthorised absence from 11.5.1988 to 13.6.1988. All medals and decorations earned by the petitioner stood forfeited. It is also contended that after the discharge of the petitioner from imprisonment, the petitioner made requests to the authorities by letters dated 7.7.1988, 15.7.1988, but the same remained unreplied. It is also submitted that the petitioner is caused extreme hardships and that he belongs to a poor family, also a member of Scheduled Tribe and he has a very small piece of land as

the only source of livelihood. It is also submitted that the petitioner is not able to maintain his family from the earnings derived from the said small piece of land. He has to maintain his wife and two children from the meagre earning he has. It is also argued that the penalty imposed upon the petitioner is extremely harsh, excessive and disproportionate and that in view of the law laid down by the Honourable Supreme Court of India, the penalty imposed upon the petitioner deserves interference, more particularly in light of the judgement in the matter of Ranjit Thakur v. Union of India and others, reported in (1987) 4 SCC 611. Mr.Raval relied upon the said authority to submit that the punishment must commensurate with the gravity of offence. If it is excessively harsh and vindictive it is open to judicial review. So far as this proposition of law is concerned, there cannot be any dispute about the same. Still the question remains as to whether the aid judgement is applicable to the facts of the present case. In my opinion, the said judgment has no application to the facts of the present case and it does not help the petitioner.

6. Mr.Raval also placed reliance upon the judgement of the Honourable the Supreme Court in the mater between Union of India and others v. Giriraj Sharma, AIR 1994 SC 215. Mr.Raval submitted that the punishment of dismissal on the ground of overstaying leave period by an employee subsequent to order of rejection of application for extension of leave cannot necessarily mean that the employee had wilful intention to flout the order. It was also submitted that if the punishment is harsh, disproportionate, the same is required to be interfered with and the relief of reinstatement with all monetary and service benefits is required to be granted. Perusal of the facts of that case reveals that in that case the period of overstaying leave was of 12 days only and the Honourable the Supreme Court felt satisfied that there existed inevitable circumstance which were not controverted for the overstay in question. The Honourable Supreme Court observed in para 2 as under :

> ".. .. The incumbent while admitting the fact that he had overstayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. We are of the opinion that the punishment of dismissal for overstaying the period of 12 days in the said circumstances which have not been controverted in the counter is

harsh since the circumstances show that it was not his intention to wilfully flout the order, but the circumstances force him to do so. .. .. .."

In my opinion, the facts of the present case are very different from the facts of the case which was before the Honourable the Supreme Court. Therefore, the said decision is of no help to the present petitioner.

7. Mr.Shah, learned advocate appearing for the respondents pointed out that the petitioner in the past also had overstayed the leave period and had remained absent without any permission for that purpose. A penalty was imposed upon the petitioner by the competent authority in the year 1981. It is given out that the petitioner had remained absent without leave, from 21.6.1981 to 5.7.1981 and thus overstayed for 15 days without permission. For this, the petitioner was awarded the punishment of 7 days' confinement to the lines with forfeiture of pay and allowance for the said period and one hour pack drill daily with effect from 28.7.1981 to 5.8.1981. Mr.Raval, learned advocate for the petitioner submitted that the said fact, which is mentioned in para 5 of the affidavit in reply is controverted by filing a rejoinder. It is interesting to note that the aforesaid facts are replied in para 2 of the rejoinder, as under :

"As to paragraph 5 of the affidavit, I maintain and reiterate what is stated in my petition. In the year 1981, I was in Manipur and I do not have any recollection of the penalty of seven days' confinement to lines for overstaying the leave. There was no question of my deliberately suppressing any such fact. I say that even assuming what the deponent says in this behalf to be true, then also, one instance from the remote past would not justify the extreme and disproportionate penalty of dismissal from service. .. .."

8. It may be noted that the petitioner belongs to a uniformed disciplined force and if what is stated in the rejoinder is taken to be true, that he does not have recollection of penalty of 7 days, then it can safely be inferred that he must have been imposed several such penalties or in the alternative he does not attach any importance to such events and therefore, he does not recollect. In light of these facts also the authorities cited cannot be held to be applicable to the facts of the

present case.

9. Next reliance was placed on sec.12 of the CRPF Act, which reads as under :

> "Every person sentenced under this Act to imprisonment may be dismissed from the Force and shall further be liable to forfeiture of pay and allowances and any other moneys due to him as well as any medals and decorations received by him."

It was submitted that from sec.12 of the Act it is clear that every imprisonment is not necessarily to result in dismissal, meaning thereby, there is a discretion conferred on the authorities by sec.12(1) of the Act. Therefore, it was for the competent authority to apply mind before imposing penalty of dismissal. Mr.Shah, learned advocate appearing for the respondents submitted that the authorities, looking to the past record of the petitioner, have applied their mind to the facts of the case and came to the conclusion that petitioner is required to be dismissed. Mr.Raval then contended that the order at Annexure 'E' does not disclose this particular fact. True, that the order has not in so many words stated the past record of the petitioner, but then the fact remains that the past record of the petitioner is, as is discussed hereinabove. The petitioner has tried to run away from the said fact, the details of which are set out in para 5 of the affidavit in reply by saying that the petitioner does not have any recollection of any such punishment.

10. Mr.Raval then tried to place reliance on the judgement of the Honourable the Supreme Court in the matter of Union of India and another Vs. B.C. Chaturvedi, reported in (1995) 6 SCC 750. In my opinion, this decision also does not help the petitioner in any manner. On the contrary in this case, the Honourable the Supreme Court has held that the nature, object and scope of judicial review is not unlimited, whereby the entire decision making process can be reviewed and that the factors which were considered during the decision making process are open at large for judicial review. On the contrary, it is clearly stated in this decision that where the findings of the disciplinary authority or the appellate authority are based on evidence it is not open for the court or the tribunal to reappreciate the evidence and substitute its own findings. Mr.Raval is not able to point out anything which will warrant an interference with the aforesaid two impugned orders at

the hands of this Court by exercising the extraordinary powers under Article 226 of the Constitution of India. In fact, in the present case, Mr.Raval is not able to point out as to whether after having applied for the extension of 4 days leave on 10.5.1988, the petitioner had ever applied for further extension of leave on account of illness of his wife. Mr.Raval is also not able to point out that under what circumstances the petitioner did not have recollection of the past incident wherein penalty of 7 days' confinement to the lines with forfeiture of pay and allowance for the said period and one hour pack drill daily with effect from 28.7.1981 to 5.8.1981 was imposed which speaks for itself. Mr.Raval last submitted that the petitioner had made two representations dated 7.7.1988 and 15.7.1988, which are not replied to by the authorities. The authorities may reply to the representations made by the petitioner, but that has nothing to do with the result of this petition.

11. In the result, the petition fails. The same is dismissed. Rule is discharged with no order as to costs.

4th August 2000 (Ravi R. Tripathi, J.)

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